

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Health Care Committee

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BILL: CS/CS/SB 1752

INTRODUCER: Health Care Committee, Transportation Committee, and Senator Sebesta

SUBJECT: Driver's Licenses

DATE: March 30, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Meyer</u>	<u>TR</u>	<u>Fav/CS</u>
2.	<u>Garner</u>	<u>Wilson</u>	<u>HE</u>	<u>Fav/CS</u>
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	<u>TA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This bill provides for the issuance of an identification card at no cost to a person who voluntarily surrenders her/his driver's license, or whose license is suspended or revoked due to the person not being physically or mentally qualified or determined incompetent to drive. In addition, a person who voluntarily surrenders his/her driver's license for reasons stated above may be issued at his/her option an identification card having a distinctive gold marking.

The bill revises the requirements relating to reporting of alleged disabilities to the Department of Highway Safety and Motor Vehicles (DHSMV). Specifically, a licensed allopathic or osteopathic physician is required to report to DHSMV a patient over the age of 15 whom the physician has diagnosed with epilepsy, cataplexy, or narcolepsy, which has been unresponsive to medical treatment.

The bill specifies that no driver's license may be issued or renewed for a length of time greater than a driver's 80<sup>th</sup> birthday and requires a mandatory 4-year driver's license renewal period for persons over 80 years of age. Specifically, the bill provides that the driver's license of any person expires at midnight on the licensee's 80<sup>th</sup> birthday. A license issued to a person after that person is 80 years of age shall expire at midnight on the licensee's birthday that next occurs on or after the fourth anniversary of the date of issue. The renewal fee for a driver's license that expires pursuant to this bill shall be waived if the applicant holds an otherwise valid license that has been issued for less than four years.

The bill allows physicians to release medical records to DHSMV for the purpose of determining whether a person with epilepsy, narcolepsy, or cataplexy may safely operate a motor vehicle on the highways.

This bill amends ss. 322.051, 322.126, 322.18, and 456.057, F.S.

## **II. Present Situation:**

### **Identification Cards**

Section 322.051, F.S., provides requirements for the issuance of an identification card by DHSMV. Any person who is 12 years of age or older, or any person who has a disability, regardless of age, who applies for a disabled parking permit, may be issued an identification card by DHSMV. An applicant must submit a complete application, application fee, and proof of identity as required by DHSMV.

According to DHSMV, when a driver applies for an identification card after voluntarily surrendering his/her driver's license or being suspended when determined to be "incompetent to drive a motor vehicle," there is a \$3 fee for the issuance of an original identification card. If the applicant is 60 years of age or older, the identification card is issued with a non-expiring date. The fee for an original identification card is deposited into the General Revenue Fund.

### **Driver's License Examination and Reexamination Requirements**

The DHSMV is currently required to examine every first-time applicant, regardless of age, prior to the issuance of an original Florida driver's license. The examination includes a test of eyesight and hearing, ability to read and understand highway signs, knowledge of traffic laws, and a demonstration of motor vehicle operation skills. However, a new Florida resident with a valid out-of-state license may reciprocate his/her license and is only required to pass the eye exam.

Once a license is issued, DHSMV continuously monitors driver performance to ensure Florida's roads are safe. One-way DHSMV monitors driver performance is through reexaminations of drivers it believes are incompetent or otherwise not qualified to drive (s. 322.221, F.S.). On written notice of at least 5 days and having good cause, DHSMV may require a licensed driver to submit to an examination or reexamination. "Good cause" includes, but is not limited to, the recommendation from a court, a law enforcement agency, or a physician.

At the time of renewal, a licensee may be subject to reexamination by DHSMV. The reexamination consists of tests of the licensee's eyesight and hearing and her/his ability to read and understand highway signs and pavement markings (s. 322.121, F.S.).

### **Driver's License Issuance Periods**

An initial driver's license issuance is valid for 6 years, concurrent with the applicant's birthday. A renewal driver's license is valid for 4 years; however, if the applicant's driving record does not include convictions for the preceding 3 years or revocations, disqualifications, or suspensions over the preceding 7 years, the renewal driver's license is valid for 6 years.

Currently, DHSMV may issue 4-year and 6-year license extensions by mail, electronic, or telephonic means, unless renewal applicants are directed by DHSMV to appear for an in-person

examination. Licensed drivers are eligible for two consecutive license extensions. Therefore, the maximum time from the original driver's license issuance to the end of the second license renewal could be 18 years (6 year original license and two mail-in renewal periods of 6 years each = 18 years). According to DHSMV, there is a \$15 fee to renew a driver's license, which is deposited into the General Revenue Fund.

### **Driving Injuries and Accidents Due to Aging, Physical, or Mental Impairment**

#### *Aging*

Motor vehicle injuries are a leading cause of injury-related deaths in the older population (persons 65 years and older). Per mile driven, the fatality rate for drivers 85 years and older is nine times higher than the rate for drivers 25 to 69 years old. There are two reasons for this excess in fatalities. First, drivers 75 years and older are involved in significantly more motor vehicle crashes per mile driven than middle-aged drivers. Second, older drivers are considerably more fragile. Fragility begins to increase at ages 60 to 64 and increases steadily with advancing age. By age 80, male and female drivers are 4 and 3.1 times more likely, respectively, than 20 year olds to die as a result of a motor vehicle crash.<sup>1</sup>

#### *Physical and Mental Impairment*

Physical and mental impairments (including fatigue, illness, and injury) may affect driving ability. Medications to treat physical and mental illnesses or injury, as well, can hamper driving ability, whether the medicine is taken for a temporary or chronic illness. According to the AMA, the following are ways that physical and mental impairments can present to a physician or caregiver, and should raise a concern that the condition could affect driving ability:

#### Acute Events

Acute events that can impair driving performance include: acute myocardial infarction, acute stroke and other traumatic brain injury, syncope and vertigo, seizure, surgery, and delirium from any cause. Prior to hospital or emergency department discharge, patients and appropriate caregivers should be counseled as needed regarding driving restrictions and future assessment and rehabilitation.

#### Chronic Medical Conditions

Certain chronic medical conditions put persons at risk for impaired driving. Patients may require formal assessment to determine the impact of these conditions on their level of function:

- *Diseases affecting vision* including cataracts, diabetic retinopathy, macular degeneration, glaucoma, retinitis pigmentosa, field cuts, and low visual acuity even after correction.
- *Cardiovascular disease*, especially when associated with pre-syncope, syncope or cognitive deficits, including unstable coronary syndrome, arrhythmias, congestive heart failure, hypertrophic obstructive cardiomyopathy, and valvular disease.

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<sup>1</sup> *Physician's Guide to Assessing and Counseling Older Drivers*, American Medical Association (AMA) with support from the National Highway Traffic Safety Administration (NHTSA). 2003. Found at <http://www.nhtsa.dot.gov/PEOPLE/INJURY/olddrive/OlderDriversBook/pages/Chapter1.html> (last visited on March 26, 2006)

- *Neurologic disease* including dementia, multiple sclerosis, Parkinson's disease, peripheral neuropathy, and residual deficits from stroke.
- *Psychiatric disease* including mood disorders, anxiety disorders, psychotic illness, personality disorders, and alcohol or other substance abuse.
- *Metabolic disease* including Type I and Type II diabetes mellitus and hypothyroidism.
- *Musculoskeletal disabilities* including arthritis and foot abnormalities.
- *Chronic renal failure*.
- *Respiratory disease* including chronic obstructive pulmonary disease and obstructive sleep apnea.

#### Medical Conditions with Unpredictable/Episodic Events

According to the AMA, patients should be counseled not to drive during any of the following acute events or if the patient is at-risk for the following conditions: pre-syncope or syncope; angina; transient ischemic attack; hypoglycemic attack; seizure and/or sleep attack or cataplexy. Some of the acute events and physical conditions that may put a person at highest risk for impaired driving include epilepsy, narcolepsy, catalepsy, and cataplexy.

- Epilepsy, a physical condition caused by sudden, brief changes in how the brain works, is estimated to affect one percent of the U.S. population, about 2.5 million people. In about half of all cases no cause can be found, but head injuries, brain tumors, lead poisoning, problems in brain development before birth, and certain genetic and infectious illnesses can all cause epilepsy.

Epilepsy occurs when nerve cells in the brain fire electrical impulses at a rate of up to four times higher than normal. This causes a sort of electrical storm in the brain, known as a seizure. A pattern of repeated seizure is referred to as epilepsy. Medication controls seizure for the majority of patients, who are otherwise healthy and able to live full and productive lives. On the other hand, at least 200,000 Americans have seizure more than once a month.<sup>2</sup>

Every state regulates driver's license eligibility of persons with certain medical conditions. The most common requirement for people with epilepsy are that they be seizure free for a specific period of time and submit a physician's evaluation of their ability to drive safely. Another common requirement is the periodic submission of medical reports, in some states for a specified period of time and in others for as long as the person remains licensed.<sup>3</sup>

- Narcolepsy is a chronic neurological disorder caused by the brain's inability to regulate sleep-wake cycles normally. At various times throughout the day, people with narcolepsy experience fleeting urge to sleep. If the urge becomes overwhelming, patients fall asleep for periods lasting from a few seconds to several minutes. In rare cases, some people may remain asleep for an hour or longer.

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<sup>2</sup> <http://www.medicinenet.com/seizure/article.htm> (last visited on March 26, 2006)

<sup>3</sup> <http://www.epilepsyfoundation.org/answerplace/Social/driving/statedrivinglaws.cfm> (last visited on March 26, 2006)

Narcoleptic sleep episodes can occur at any time, and thus frequently prove profoundly disabling. People may involuntarily fall asleep while at work or at school, when having a conversation, playing a game, eating a meal, or, most dangerously, when driving an automobile or operating other types of potentially hazardous machinery. In addition to daytime sleepiness, three other major symptoms frequently characterize narcolepsy: cataplexy or the sudden loss of voluntary muscle tone; vivid hallucinations during sleep onset or upon awakening; and brief episodes of total paralysis at the beginning or end of sleep.<sup>4</sup>

- Catalepsy and cataplexy are related terms that are most frequently associated, respectively, with epilepsy and narcolepsy. *Catalepsy* is a pathological condition characterized by a loss of consciousness accompanied by rigidity of muscles that keeps limbs in any position in which they are placed. Attacks vary from several minutes to days and occur in a variety of clinical syndromes, most frequently in schizophrenia, epilepsy, and hysteria.<sup>5</sup> *Cataplexy* is a debilitating medical condition in which a person suddenly feels weak and collapses at moments of strong emotion such as laughter, anger, fear or surprise. In so collapsing, people with cataplexy may injure themselves. Laughter and other emotions trigger a reflex in persons that can bring many of the muscles of the body to the point of collapse. Cataplexy often affects people who have narcolepsy, a disorder in which there is great difficulty remaining awake during the daytime.<sup>6</sup>

### Medications

Many non-prescription and prescription medications have the potential to impair driving ability, either by themselves or in combination with other drugs. Combinations of drugs may affect drug metabolism and excretion, and dosages may need to be adjusted accordingly. Medications with strong potential to affect the patient's driving performance include: anticholinergics; anticonvulsants; antidepressants; antiemetics; antihistamines; antihypertensives; antiparkinsonians; antipsychotics; benzodiazepenes and other sedatives/anxiolytics; muscle relaxants; narcotic analgesics; and stimulants.

In order to determine if any of these conditions exist, a physician should conduct a review of systems. The review of systems can reveal symptoms or conditions that may impair driving performance. In addition to further work-up, driving safety should be addressed. The review of systems should include:

- *General*: fatigue, weakness
- *HEENT*: headache, head trauma, visual changes, vertigo
- *Respiratory*: shortness of breath
- *Cardiac*: chest pain, dyspnea on exertion, palpitations, sudden loss of consciousness
- *Musculoskeletal*: muscle weakness, muscle pain, joint stiffness and pain, decreased range of motion
- *Neurologic*: loss of consciousness, feelings of faintness, seizures, weakness/paralysis, tremors, loss of sensation, numbness, tingling

<sup>4</sup> [http://www.ninds.nih.gov/disorders/narcolepsy/detail\\_narcolepsy.htm](http://www.ninds.nih.gov/disorders/narcolepsy/detail_narcolepsy.htm) (last visited on March 26, 2006)

<sup>5</sup> <http://www.encyclopedia.com/html/c1/catalepsy.asp> (last visited on March 26, 2006)

<sup>6</sup> <http://www.medterms.com/script/main/art.asp?articlekey=10470> (last visited on March 26, 2006)

- *Psychiatric*: depression, anxiety, memory loss, confusion, psychosis, mania

### **Reporting of Physical or Mental Impairment**

The *Physician's Guide to Assessing and Counseling Older Drivers*<sup>7</sup> was created by the American Medical Association (AMA) with support from the National Highway Traffic Safety Administration (NHTSA) to help physicians address preventable injuries - in particular, those injuries incurred in motor vehicle crashes. As the number of older drivers and those with chronic medical conditions rise, patients and their families will increasingly turn to physicians for guidance on safe driving. Physicians will have the challenge of balancing their patients' safety against their transportation needs.

This issue of the physician's role in examining a driver's functioning is so critical that the AMA has adopted Ethical Opinion E-2.24 "Impaired Drivers and Their Physicians."<sup>8</sup> This ethical opinion recommends that physicians follow the guidelines below in assessing and treating impaired drivers:

- Physicians should assess patients' physical or mental impairments that might adversely affect driving abilities. Each case must be evaluated individually since not all impairments may give rise to an obligation on the part of the physician. Nor may all physicians be in a position to evaluate the extent or the effect of an impairment (e.g., physicians who treat patients on a short-term basis). In making evaluations, physicians should consider the following factors: (a) the physician must be able to identify and document physical or mental impairments that clearly relate to the ability to drive; and (b) the driver must pose a clear risk to public safety.
- Before reporting, there are a number of initial steps physicians should take. A tactful but candid discussion with the patient and family about the risks of driving is of primary importance. Depending on the patient's medical condition, the physician may suggest to the patient that he or she seek further treatment, such as substance abuse treatment or occupational therapy. Physicians also may encourage the patient and the family to decide on a restricted driving schedule, such as shorter and fewer trips, driving during non-rush-hour traffic, daytime driving, and/or driving on slower roadways if these mechanisms would alleviate the danger posed. Efforts made by physicians to inform patients and their families, advise them of their options, and negotiate a workable plan may render reporting unnecessary.
- Physicians should use their best judgment when determining when to report impairments that could limit a patient's ability to drive safely. In situations where clear evidence of substantial driving impairment implies a strong threat to patient and public safety, and

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<sup>7</sup> *Physician's Guide to Assessing and Counseling Older Drivers*, American Medical Association (AMA) with support from the National Highway Traffic Safety Administration (NHTSA). 2003. Found at <http://www.nhtsa.dot.gov/PEOPLE/INJURY/olddrive/OlderDriversBook/pages/Preface.html> (last visited on March 26, 2006)

<sup>8</sup> American Medical Association. *American Medical Association Ethical Opinion E-2.24 Impaired Drivers and Their Physicians*. Adopted December 1999.

where the physician's advice to discontinue driving privileges is ignored, it is desirable and ethical to notify the Department of Motor Vehicles.

- The physician's role is to report medical conditions that would impair safe driving as dictated by his or her state's mandatory reporting laws and standards of medical practice. The determination of the inability to drive safely should be made by the state's Department of Motor Vehicles.
- Physicians should disclose and explain to their patients this responsibility to report.
- Physicians should protect patient confidentiality by ensuring that only the minimal amount of information is reported and that reasonable security measures are used in handling that information.
- Physicians should work with their state medical societies to create statutes that uphold the best interests of patients and community, and that safeguard physicians from liability when reporting in good faith.

Florida law is currently permissive related to whether or not a physician has to report a person with a physical or mental impairment to DHSMV. Section 322.126, F.S., provides that a physician, person, or agency may report to DHSMV her/his knowledge of a licensed driver or applicant's mental or physical disability to drive. The report should be in writing giving the full name, date of birth, address, and a description of the alleged disability of any person over the age of 15 having mental or physical disorders that could affect his/her driving ability.

An issue raised by mandatory reporting requirements for physicians is that of confidentiality of patient records. Section 456.057, F.S., provides that medical records are confidential and, absent certain exceptions, they cannot be shared with or provided to anyone without the consent of the patient. Subsection (5) identifies the circumstances when medical records may be released without written authorization from the patient. The circumstances are as follows:

- To any person, firm, or corporation that has procured or furnished such examination or treatment with the patient's consent;
- When compulsory physical examination is made pursuant to Rule 1.360, Florida Rules of Civil Procedure, in which case copies of the medical records shall be furnished to both the defendant and the plaintiff;
- In any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice to the patient or the patient's legal representative by the party seeking such records;
- For statistical and scientific research, provided the information is abstracted in such a way as to protect the identity of the patient or provided written permission is received from the patient or the patient's legal representative; or
- To a regional poison control center for purposes of treating a poison episode under evaluation, case management of poison cases, or compliance with data collection and reporting requirements of s. 395.1027, F.S., and the professional organization that certifies poison control centers in accordance with federal law.

The Florida Supreme Court has addressed the issue of whether a health care provider, absent any of the above-referenced circumstances, can disclose confidential information contained in a patient's medical records as part of a medical malpractice action.<sup>9</sup> The court ruled that, pursuant to s. 455.241, F.S., (the predecessor to current s. 456.057(6), F.S.), only a health care provider who is a defendant, or reasonably expects to become a defendant, in a medical malpractice action can discuss a patient's medical condition. The court also held that the health care provider can only discuss the patient's medical condition with his or her attorney in conjunction with the defense of the action. The court determined that a defendant's attorney cannot have ex parte discussions about the patient's medical condition with any other treating health care provider.

### III. Effect of Proposed Changes:

**Section 1.** Amends s. 322.051, F.S., providing for the issuance of an identification card at no cost to a person who voluntarily surrenders his/her driver license, or whose license is suspended or revoked due to the person not being physically or mentally qualified or determined incompetent to drive. In addition, a person who voluntarily surrenders his/her driver's license for reasons stated above, may be issued at his/her option an identification card having a distinctive gold marking.

**Section 2.** Amends s. 322.126, F.S., requiring a licensed physician to report to DHSMV a patient over the age of 15 who the physician has diagnosed with epilepsy, cataplexy, or narcolepsy, which has been unresponsive to medical treatment; and providing there to be no monetary liability and no cause of action for damages against any physician for any action taken without intentional fraud, or for the failure to take any action as result of carrying out the reporting provisions.

**Section 3.** Amends s. 322.18, F.S., specifying that no driver's license may be issued or renewed for a length of time greater than a driver's 80<sup>th</sup> birthday; and requiring a mandatory 4-year driver's license renewal period for persons over 80 years of age. Specifically, the bill provides that the driver's license of any person expires at midnight on the licensee's 80<sup>th</sup> birthday. A license issued to a person after that person is 80 years of age shall expire at midnight on the licensee's birthday that next occurs on or after the fourth anniversary of the date of issue. The renewal fee for a driver's license that expires pursuant to this bill shall be waived if the applicant holds an otherwise valid license that has been issued for less than four years.

**Section 4.** Amends s. 456.057, F.S., specifying that physicians may release information to DHSMV for the purpose of determining whether a person with epilepsy, narcolepsy, or cataplexy may safely operate a motor vehicle on the highways.

**Section 5.** Provides an effective date of July 1, 2006.

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<sup>9</sup> *Acosta v. Richter*, 671 So.2d 149 (Fla. 1996).

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, s. 18 of the Florida Constitution.

**B. Public Records/Open Meetings Issues:**

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

**C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, Subsection 19(f) of the Florida Constitution.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

Persons who voluntarily surrender their driver's license and certain persons who have their licenses suspended or revoked will not have to pay the fee for an identification card.

**B. Private Sector Impact:**

Driver license applicants 80 years of age and over shall only be issued a 4-year driver's license renewal. According to a bill analysis provided by DHSMV, currently, there are approximately 890,000 drivers over 80 years of age who are scheduled to renew their driver's licenses over the next 6 years. This bill would affect individuals of this population, who currently fall into the "safe driver" category and are issued a 6-year license. This population would be required to visit an issuance office and pay renewal fees more frequently.

**C. Government Sector Impact:**

The Department of Highway Safety and Motor Vehicles estimates that the bill will result in a \$51,000 recurring revenue loss to the General Revenue Fund as a result of providing free identification cards to certain individuals. These costs would be offset by a revenue increase to the General Revenue Fund of \$4,566,820 over fiscal years 2006-2007 and 2011-2012 as a result of converting licensees to a 4-year license renewal cycle upon attainment of their 80th birthday. This fiscal effect assumes that individuals who are currently eighty and above will be transitioned to the 4-year cycle at their normal renewal date.

The department estimates that it will cost \$404,089 for the first year and approximately \$400,000 in subsequent years to provide additional staff to support license renewal activity for persons 80 years of age and older. Also, the bill will require contracted

programming modifications to the Driver License Software Systems at a cost of \$40,372. This assumes the need for 750 contracted programming hours at \$53.83 per hour.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The DHSMV recommends changing the effective date of the bill to January 1, 2007, to allow sufficient time for implementation.

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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